

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

ZANE GREY,

Plaintiff,

vs.

NICOLE SCRIBNER, Sanders County
Elections Director; NICOLE
SCRIBNER (personal capacity),

Defendant.

CV-22-82-M-BMM

ORDER

INTRODUCTION

Plaintiff Zane Grey (“Grey”), a Sanders County resident, filed suit against the following Defendants: Christi Jacobsen, Montana Secretary of State, in her official and personal capacity (“Secretary Jacobsen”); Nicole Scribner, Sanders County Elections Director, in her official and personal capacity (“Elections Director Scribner”); and Election Systems & Software, LLC (“ES&S”) (collectively “Defendants”). (Doc. 1.) Grey alleges that Defendants conspired to deprive him of his Fourteenth Amendment right to equal protection of the law and the right to vote when Secretary Jacobsen certified ES&S’s election systems for

use in Montana and Elections Director Scribner implemented the use of ES&S machines in Sanders County. (Doc. 1 at 1; Doc. 33 at 1.)

ES&S and Secretary Jacobsen moved the Court to dismiss all claims asserted against them by Grey in the Complaint and Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). (Docs. 7; 20; 34; 40.) The Court granted ES&S's and Secretary Jacobsen's Motions to Dismiss on October 17, 2022. (Doc. 53.)

Elections Director Scribner filed an Unopposed Motion to Dismiss for Failure to State a Claim (Doc. 57) and attached an email example with Grey in which he communicates that he does not oppose the Court's determination that he failed to plead sufficient facts to establish standing. (Doc. 57-1.) The Court held a status call on November 17, 2022. (Doc. 59.) Mark Higgins and Gregory Bonilla appeared on behalf of Elections Director Scribner. (Doc. 62.) Grey did not appear. (Doc. 62.) The Court ordered Grey to respond to the motion to dismiss by November 18, 2022. (Doc. 59). Grey failed to respond. The Court interprets Grey's absence and failure to respond as acquiescence.

Upon no objection, and good cause appearing, Election Director Scribner's Unopposed Motion to Dismiss (Doc. 17) is hereby **GRANTED**. The Court dismisses the claims remaining against Defendant Elections Director Scribner in both her official and personal capacities.

ORDER

Accordingly, **IT IS ORDERED** that Defendant Election Director Nichole Scribner's Unopposed Motion to Dismiss (Doc. 57) is **GRANTED**. Plaintiff Grey's Amended Complaint (Doc. 33) is dismissed with prejudice.

Dated the 18th day of November, 2022.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris, Chief District Judge
United States District Court